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Playground AI LLC

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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Playground AI LLC,

Case No. _____

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Plaintiff;

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v.

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COMPLAINT
DEMAND FOR JURY TRIAL

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**Mighty Computing, Inc., and
Suhail Doshi**,

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Defendants.

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Plaintiff Playground AI LLC ("Playground AI"), by and through its undersigned

counsel, brings this action against Defendants Mighty Computing, Inc., and Suhail Doshi,

and alleges the following:

INTRODUCTION

1.   Playground AI is a company specializing in artificial intelligence software and consulting. It offers text-to-image generative AI on its website, and consulting and design services related to machine learning, data collection, and data visualization.

2.   Playground AI uses the marks "Playground AI," "Playground.ai," and "playgroundAI" and variations with different capitalization ("Playground AI Marks") to distinguish its goods and services. This includes using the <playground.ai> domain name to direct to its website and displaying the marks on its website and social media pages.

3.   "Playground" and "AI" are both generic terms in the AI software context. Playground refers to an application or platform where users can safely experiment, test, learn, or play with various tools and algorithms, while AI refers to "artificial intelligence." AI playgrounds have become ubiquitous in recent years.

4.   However, Playground AI's inverted word order, in which playground is a noun-adjunct modifying AI, creates a distinctive composite—it describes neither a type of software playground, nor a type of AI. "Playground.ai" is also particularly distinctive, as consumers understand that it refers to a specific domain name and only one entity can occupy a domain name at a time.

5.   Since December 2019, Playground AI and its predecessors-in-interest have continually used the Playground AI Marks and slight variations thereof to distinguish their goods and services: (1) applications that apply machine learning to image, video, and other data; and (2) consulting and software design services relating to machine learning, data collection, and data visualization.

6.   This includes (1) "Anonymous Camera," a popular and well-publicized application for investigative journalists and political activists, which uses AI to identify people in images and videos; blur, pixelate, or block identifying features in real time; and strip metadata from the resulting file; and (2) "Worklens," a mobile application that uses AI to analyze, label, group, and search photos based on content.

7.   Mighty Computing, Inc. is a technology company founded and run by Suhail Doshi. Upon information and belief: (1) Mighty Computing, Inc. is a closely held corporation with approximately ten employees and an inconsistent history of compliance with legal formalities and obligations; (2) Mr. Doshi is a central figure in the company and has personally participated in all major business strategy, branding, and marketing decisions and actions. Accordingly, the corporate entity and Suhail Doshi are referred to collectively herein as "Mighty."

8.   Mighty originally launched in or around March 2019, and used funding provided by Y Combinator in August 2019 to develop a subscription cloud-based web browser service branded "Mighty." However, Mighty took nearly two years to launch its service and was ultimately unsuccessful. Mighty abandoned the service in late 2022, offered to sell its IP, and pivoted to "creative tools using advances in AI."

9.   In September 2022, Mighty launched a website at <playgroundai.com> with the title "Playground AI," and began registering similar social media handles. On or shortly after launch, Mighty deployed an application with text-to-image and image search features on its website, and it now provides free and paid access plans to U.S. customers.

10.   At the time of launch, Mighty knew or should have known that the marks "Playground AI" and "playgroundai" were already in use by another company offering substantially similar goods or services, specifically, applications that apply machine learning to image, video, and other data.

11.   Anonymous Camera received substantial publicity in 2020, and use of the Playground AI Marks would have been obvious from a simple web search. Moreover, when Mighty registered its Twitter/X handle, @playground_ai, it knew or should have known that @playgroundai was already taken. Indeed, Mighty registered an identical handle on YouTube, and later sought to purchase Playground AI's Twitter/X handle.

12.   Mighty knows that (1) the marks it is using are identical or substantially similar to the Playground AI Marks; (2) there is a strong likelihood of confusion regarding

the source, sponsorship, or affiliation of the parties' goods or services; and (3) consumers are actually confused.

13.   On or around September 11, 2023, Mighty filed a WIPO UDRP complaint against the owner of <playground.ai>, which is Playground AI. Mighty's complaint alleged that (1) it has common law rights in Playground and Playground AI; (2) the domain name is "identical or nearly identical" to those marks; (3) the owner "has no rights or legitimate interests in the disputed domain name"; and (4) the owner knew of Mighty's "prior trademark rights and purposely adopted an identical/confusingly similar domain to offer competing services, harvest Complainant's users' personal information, and/or to redirect traffic away from Complainant's own website." Mighty has since requested to withdraw the complaint "without prejudice" to filing a new one.

14.   Given the undisputed timeline, one might think Mighty was describing its own behavior. Mighty launched <playgroundai.com> as part of a transition to "creative tools using advances in AI," yet lacked the creativity to come up with a new mark. Upon information and belief, Mighty intentionally appropriated the Playground AI Marks to use their historical good will in the AI space to attract new customers and venture capital funding while pivoting from a failed business completely unrelated to AI.

15.   Mighty has funded an aggressive marketing and litigation campaign against Playground AI in the hopes of overwhelming and bullying the company out of its rights and domain name. Unfortunately, Mighty has had some success, causing popular search engines to down-rank Playground AI's site, and at least one popular web browser to auto-redirect queries for <playground.ai> to Mighty's website.

16.   Playground AI seeks a judgment: (1) finding that Mighty is liable for false association and false designation of origin under 15 U.S.C. § 1125(a); and (2) declaring that Playground AI is not liable for cybersquatting under 15 U.S.C. §1125(d). Playground AI seeks damages and attorney fees for Mighty's exceptionally bad-faith conduct.

PARTIES

17.   Playground AI LLC is a Puerto Rico limited liability corporation with a principal place of business at 1413 Ponce de Leon Ave, 4th Floor, San Juan, PR 00907. Playground AI LLC's members reside in Puerto Rico and Georgia.

18.   Mighty Computing, Inc., is a Delaware limited liability company with a principal place of business at or near 548 Market Street, PMB 96342, San Francisco, CA 94104.

19.   Suhail Doshi is an individual who, upon information and belief, currently resides at 3354 20th Street, Apt 302, San Francisco, CA 94110.

JURISDICTION

20.   The Court has original subject matter jurisdiction because Playground AI's claims arise under or require construction of the Lanham Act. *See* 28 U.S.C. §§ 1331 and 1338; 15 U.S.C. § 1121.

21.   The Court has general personal jurisdiction over Mighty Computing, Inc., because its principal place of business is in San Francisco, California, and Suhail Doshi because he resides in San Francisco, California.

22.   Venue is proper under the general venue statute applicable to trademark and declaratory judgment actions because (1) Mighty Computing, Inc., and Suhail Doshi are located in this district; and (2) a substantial part of the events or omissions giving rise to the claim occurred in this district. *See* 28 U.S.C. § 1391(b).

DIVISIONAL ASSIGNMENT

23.   This dispute concerns intellectual property rights. It may be assigned to any division pursuant to General Order No. 44, Assignment Plan § D (3).

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FACTS

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A. Playground

24.   The <playground.ai> domain name was registered on December 16, 2017. Until 2019, the domain name was not used in connection with any specific goods or services, other than sale of the domain name itself.

25.   In the fall of 2019, Aaron Abentheuer co-founded a software, consulting, and design company referred to as "Playground." Although the company went through several corporate forms, including Playground.ai LLC, Playground Technologies Ltd., Playground Systems, Inc., and Random Forest Ventures LLP, it retained the underlying intellectual property and continued to be led by Mr. Abentheuer. These companies and predecessors-in-interest are collectively referred to herein as "Playground."

26.   In or before September 2019, Playground purchased <playground.ai>. Shortly thereafter, Playground started using the marks "Playground AI" "playground.ai", "playground·ai", "playgroundai," and slight variations with differences in capitalization to distinguish its goods and services, namely: (1) applications that apply machine learning to image, video, and other data; and (2) consulting and software design services relating to machine learning, data collection, and data visualization.

27.   On or around November 17, 2019, Playground launched a website showing its intent to use the domain in connection with data collection and analysis.

<div align="center">

COMPLAINT

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(*See* https://web.archive.org/web/20191117201643/http://playground.ai/).
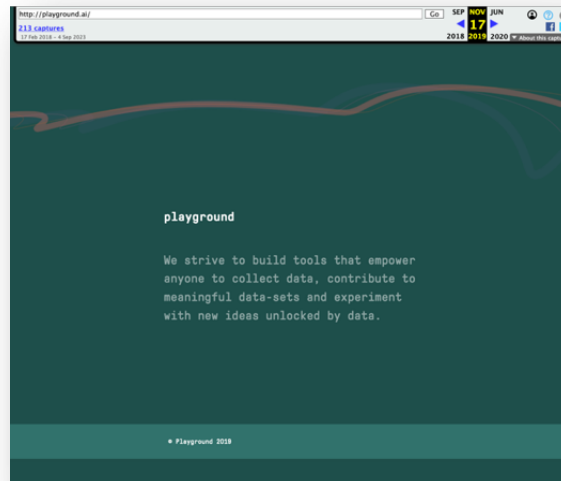
28.   On October 2, 2019, Playground registered a Reddit account with the handle "Playgroundai."

(*See* https://www.reddit.com/user/Playgroundai/).
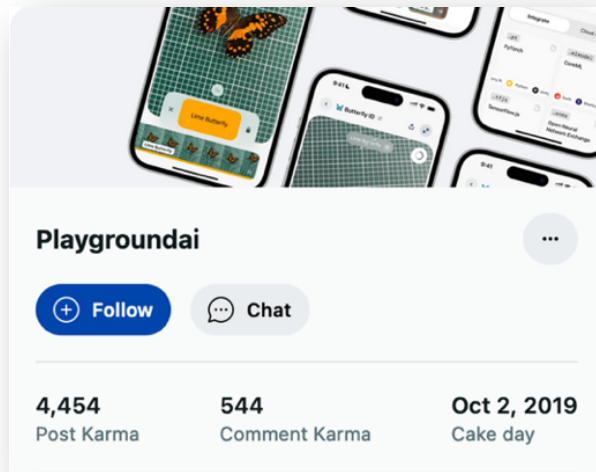
29.   On December 11, 2019, Playground attended TechCrunch's Disrupt Berlin 2019, where the company debuted an anonymous camera application for journalists and others wanting to capture anonymized images and videos. At the event, Playground used the marks "playground·ai" and "Playground AI" to refer to its products and services.

30.   A video of the event from the Associated Press shows "playground·ai" on banners and equipment, while the associated storyline for the video refers to the company as "Playground AI."

(*See* https://youtu.be/0qtWq-L0cVQ).
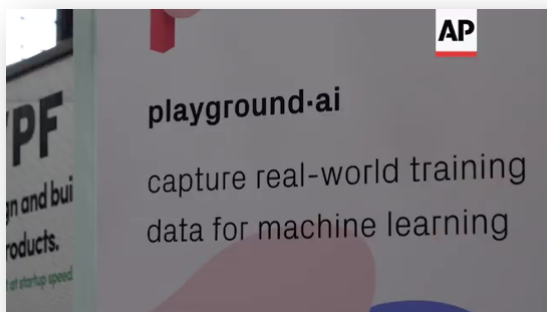
31.   That same day, Playground updated its website located at <playground.ai> to describe the company's goal to build "wholesome, sustainable and intelligent data-driven products," and the company's forthcoming anonymous camera application. The site used the mark "playground·ai" at the bottom of the page.

(*See* https://web.archive.org/web/20191211134955/https:/www.playground.ai/).

32.   On June 10, 2020, Playground launched an application called Anonymous Camera on the Apple App Store, listing the company name and brand as "Playground.AI, LLC."

(*See* https://apps.apple.com/us/app/anonymous-camera/id1504102584).
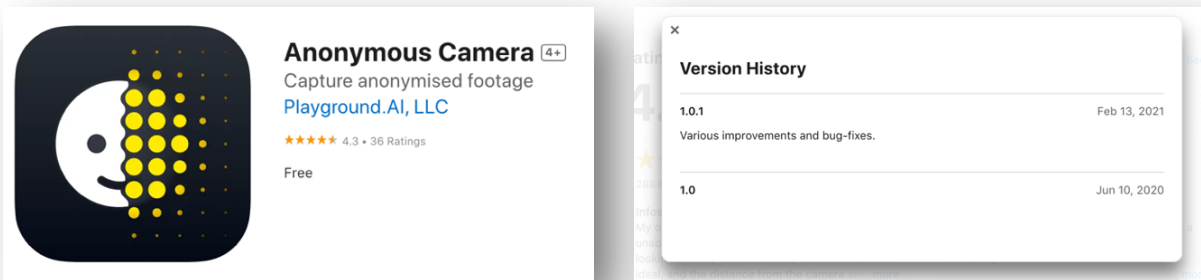
33.   Anonymous Camera uses AI, machine learning, and computer vision technology to anonymize photos and videos. It identifies people with facial and body recognition; blurs or applies a solid color to their faces or bodies; removes associated

metadata including time, date, and location; and distorts audio to anonymize voices—all in real-time and locally on a user's device for privacy.
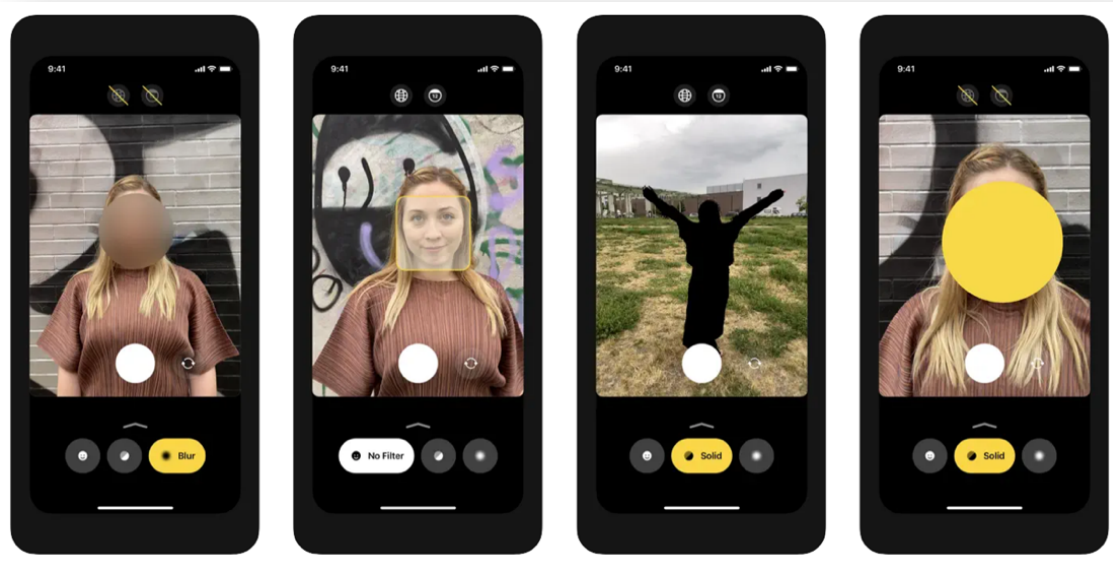

(*See* https://apps.apple.com/us/app/anonymous-camera/id1504102584).

34.   Following launch, Anonymous Camera received significant and positive media coverage. On June 11, 2020, The Verge published an article titled "Anonymous Camera is a new app that uses AI to quickly anonymize photos and videos." The article referred to Playground as "London AI startup Playground," and linked to <playground.ai> and Anonymous Camera's Apple App Store page referencing "Playround.AI." (*See* https://www.theverge.com/2020/6/11/21280293/anonymize-blur-faces-photos-videos-camera-app-ios).

35.   On June 12, 2020, 9to5Mac published an article titled "Anonymous Camera for iPhone launches with face, full-body, and voice anonymizing via on-device processing." The articled referred to Playground as "Playground.AI," and included multiple links to <playground.ai> and Anonymous Camera's Apple App Store page referencing "Playround.AI." (*See* https://9to5mac.com/2020/06/12/anonymous-camera-iphone-app-face-full-body-anonymizing/).

36.   On June 15, 2020, TWiT's Smart Tech Today podcast covered the launch of Anonymous Camera and linked to Anonymous Camera's Apple App Store page referencing "Playround.AI." (*See* https://youtu.be/LLNEdQqTMyE, https://twit.tv/shows/smart-tech-today/episodes/33).

37.   On or around June 16, 2020, Playground updated its website located at <playground.ai>, to reference the launch of Anonymous Camera, and "Sampler" an application the company was working on that would make "machine teaching accessible to anyone." The website also linked to Anonymous Camera's Apple App Store page referencing "Playround.AI."

(*See* https://web.archive.org/web/20200616011338/https://playground.ai/)
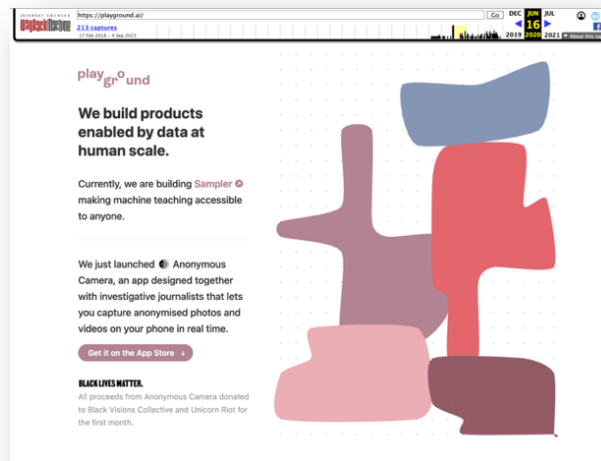
38.   On August 9, 2020, Anonymous Camera was added to CNET's software catalog under the category iOS, Digital Photo Software, Digital Photo Tools. The catalog page referred to the developer as "Playground.AI" and linked to Anonymous Camera's Apple App Store page featuring the "Playground.AI" mark.

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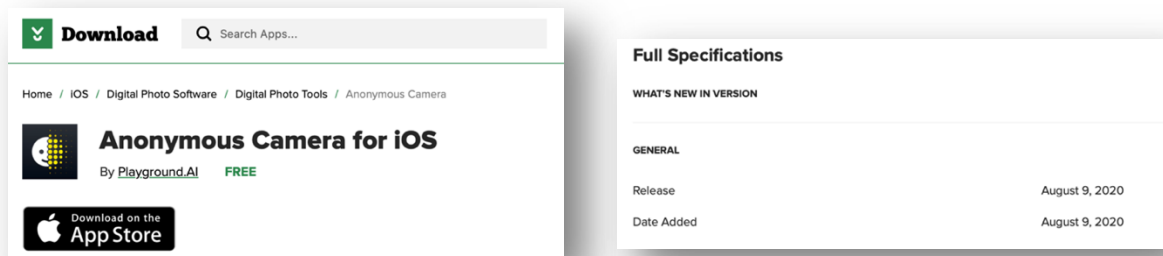
Developer's Description
By Playground.AI

Anonymous Camera allows you to seamlessly anonymize photos and videos. All
processing is done in real time, locally on device without ever uploading to the cloud.

5 (*See* https://download.cnet.com/anonymous-camera/3000-12511_4-78630481.html)

6   39.   In November 2020, Playground joined Twitter/X, under the username

7 @playgroundAI, and included a link to its website at the domain <playground.ai>.

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Playground AI
@playgroundAI

⊙ http://playground.ai   ▦ Joined November 2020

1 Following   **130** Followers

Not followed by anyone you're following

Follow

16 (*See* https://twitter.com/playgroundAI).

17   40.   On or around June 19, 2021, Playground updated its website at

18 <playground.ai> to (1) introduce a forthcoming application called "Loupe," an AI tool for

19 working with photos; (2) describe its AI consulting and design services; and (3) reference

20 a major customer—Ford Motor Company.

21   41.   Playground's listed consulting services included: (1) "Strategy [-] Bringing

22 AI literacy and readiness to the core of your organization"; (2) "Design [-] Designing

23 powerful intelligent products that put the user in control"; (3) "Data Collection [-] Cap-

24 turing and synthesising datasets that help jumpstart any data challenge;" (4) "Develop-

25 ment [-] End-to-end intelligence baked into your products and services" and (5) "Tooling

26 [-] Companies that take intelligent products seriously, collect their own training data. We

27 can support you with our integrated suite of bespoke hardware and software." The site

also continued to include a link to Anonymous Camera's Apple App Store page referencing "Playround.AI."
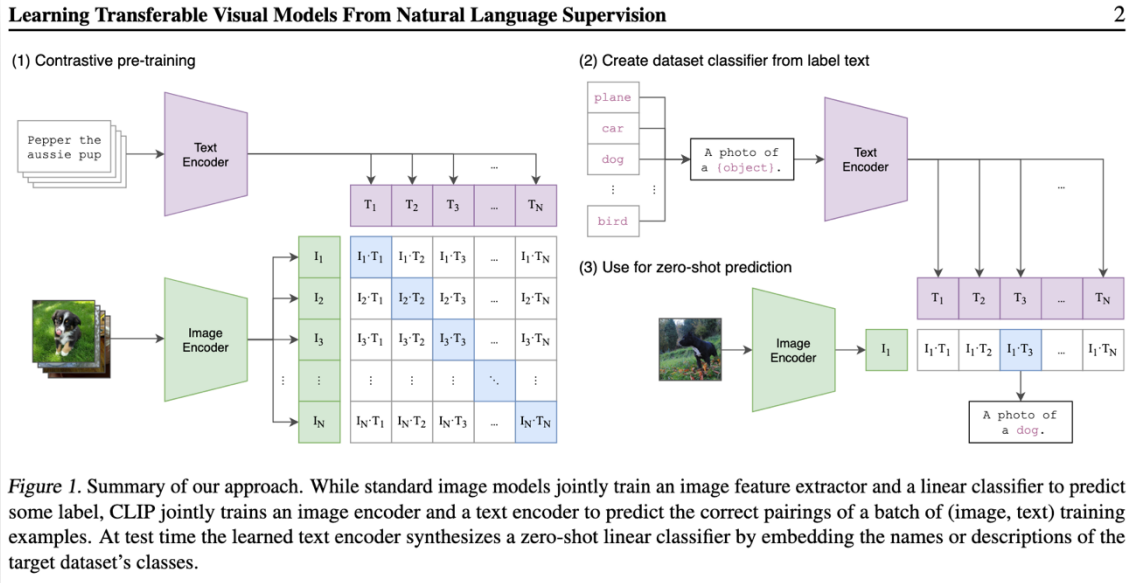
42.   By September 25, 2021, Playground had uploaded photos to its website at <playground.ai> showing a demo of Loupe, including functionality that would allow users to search photos based on content (e.g., sourdough bread):

(*See* https://web.archive.org/web/20210925063352/https://playground.ai/)
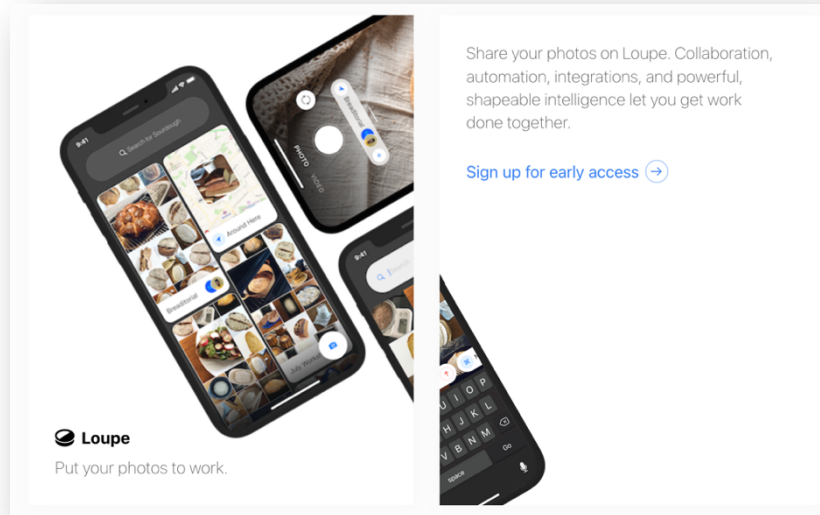
43.   "Loupe," later rebranded to "Worklens," is an application built on CLIP (Contrastive Language-Image Pretraining), an open-source machine learning model developed by OpenAI and described in *Learning Transferable Visual Models From Natural Language Supervision* by Radford et al. in 2021. (*See* https://openai.com/research/clip).

44.   The CLIP model trains an image encoder and a text encoder to predict the correct pairings of images and text. The encoders are neural networks, which transform images and text into vector representations ("embeddings") and are jointly trained to maximize the cosine similarity of embeddings for correct pairings while minimizing the similarity for incorrect pairings. Once trained, the encoders can be used to predict the description of a previously unseen image ("zero-shot prediction").

Figure 1. Summary of our approach. While standard image models jointly train an image feature extractor and a linear classifier to predict some label, CLIP jointly trains an image encoder and a text encoder to predict the correct pairings of a batch of (image, text) training examples. At test time the learned text encoder synthesizes a zero-shot linear classifier by embedding the names or descriptions of the target dataset's classes.

(*See* Radford et al., *Learning Transferable Visual Models From Natural Language Supervision,* arXiv (2021), https://arxiv.org/abs/2103.00020)

45.   Worklens applies CLIP-based machine learning to collections of images, allowing users to search and organize their photos based on content instead of labels. For example, users can search for photos of "a sleeping dog" or "packages."

46.   On May 8, 2022, Playground used its Reddit account "Playgroundai" to post a demo video of Worklens on r/MachineLearning, and invited users to try it out. The subreddit had 2.4 million members at the time, and Playground's post reached the front page with users posting: "I absolutely love what I see!"; "That looks really cool"; and "Oh my god this is amazing."

(*See* https://www.reddit.com/r/MachineLearning/comments/ul49ej/)
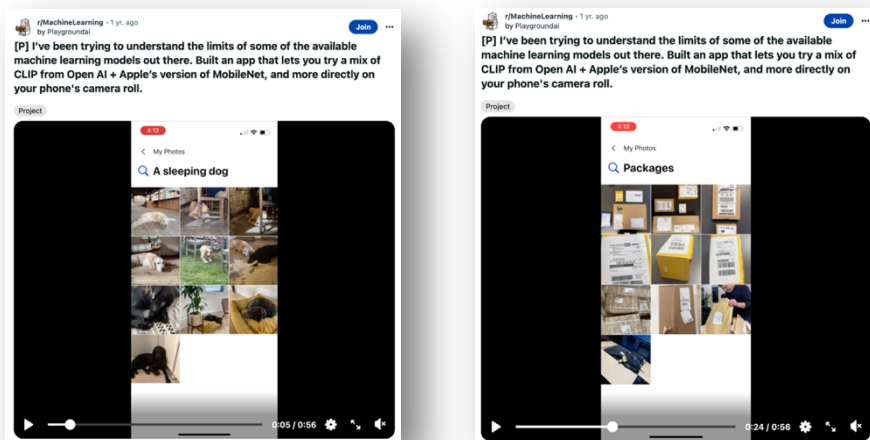
47.   In May and June 2022, Playground updated its website at <playground.ai> to reference (1) the rebranded WorkLens application; (2) a new suite of AI tools called FieldDay; and (3) AI consulting projects with Ford and Rafael Nadal.


(*See* https://web.archive.org/web/20220625001546/https://playground.ai/).
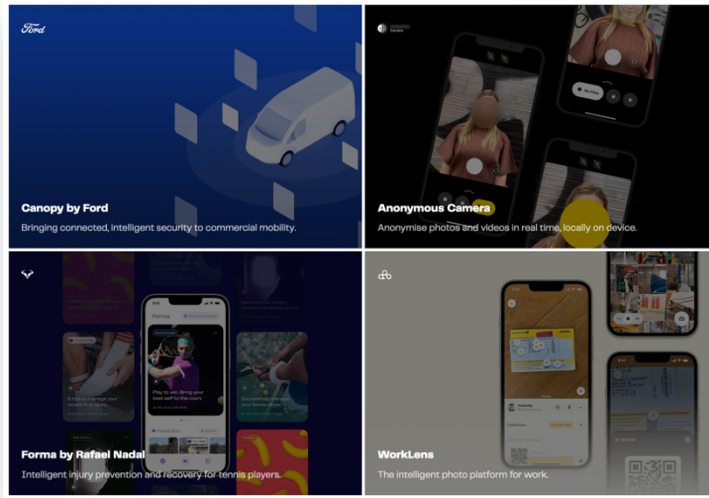
48.   In connection with its consulting work in 2022, Playground investigated using Stable Diffusion, a text-to-image model based on CLIP, for generating synthetic data to augment training data for other machine learning products and services offered by the company. For example, by creating synthetic nighttime versions of training images and videos originally taken during the day.

49.   Playground maintained its website at <playground.ai> with substantially similar content through March 30, 2023. (*See* https://web.archive.org/web/202303300 63719/https://playground.ai/).

50.   In April 2023, Playground decided to wind-down its business. On or around April 21, Playground updated its website to announce the company's sunset. But Playground did not shutdown the website. Moreover, it maintained the headline "[w]e build intelligent products for the real world. Design-driven, data-centric AI," and an email

link "Let's work together," inviting visitors or investors to the site interested in Play-ground's AI products and services to contact them.

(*See* https://web.archive.org/web/20230421053617/https://playground.ai/)
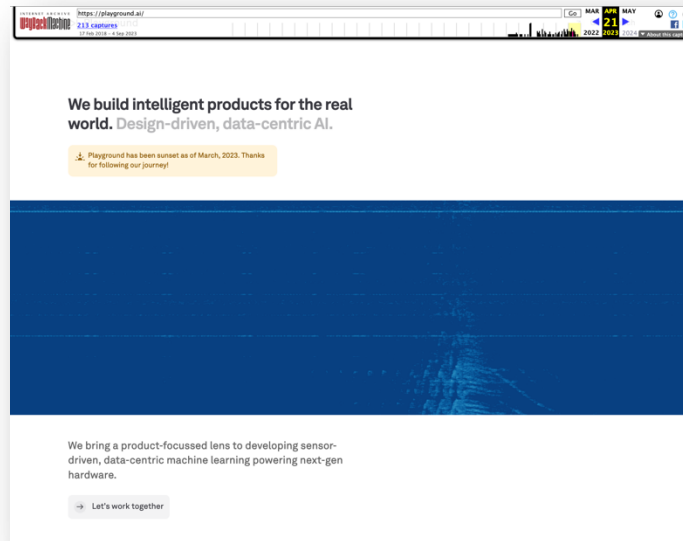
51.   Notwithstanding the planned corporate sunset, Playground continued to offer Anonymous Camera on the Apple App Store page referencing "Playground.AI".

52.   Notwithstanding the planned corporate sunset, Playground continued to use its Reddit account "Playgroundai" to introduce and discuss applications that apply machine learning to video data. This included (1) posts from May 6, 2023, regarding a Snapchat Lens based on a custom ML model built with Playground's FieldDay app; (2) posts from July 9, 2023, regarding FieldDay, which allows users to create custom com-puter vision models with an iPhone; and (3) a post from July 22, 2023, regarding an app that detects and controls Apple HomeKit devices using an iPhone camera. (*See* https://www.reddit.com/r/SnapLenses/comments/139gh28/, https://www.reddit.com/r/computervision/comments/14v1ew8/, https://www.reddit.com/r/iOSProgramming/comments/156icsx/).

53.   Through nearly four years of continuous use, Playground developed substantial good will and consumer recognition of the Playground AI Marks: (1) tens to

hundreds of thousands of users from across the United States and around the world visited Playground's website at <playground.ai>; (2) the App Store page for Anonymous Camera references "Playground.AI" as the developer, has approximately 3 million impressions, and the app has tens of thousands of U.S. downloads; (3) the Verge and other popular publications with a substantial U.S.-based readership covered Playground's products; (4) Playground posted about machine learning applications under the account name "playgroundai" on popular social media communities; and (5) Playground developed customer relationships with well-known clients such as Ford Motor Company and Rafael Nadal.

54.   Much of this good will pre-dates the current popularity of AI. Playground was on the forefront of developing innovative AI back in 2019 and obtained legitimacy in the industry long before the current wave of "me too" startups marketing AI products and services.

B. Playground AI

55.   Rick Latona is a boutique Mergers and Acquisitions broker specializing in cash flow positive digital assets such as eCommerce, membership, lead gen, and software-as-a-service (SAAS) and websites, as well as domain portfolios.

56.   Following the financial crash in 2008, Mr. Latona attended the Owner / President Management program at Harvard Business School and transitioned his business to focus on developing and selling cash flow opportunities rather than speculative assets. He has developed and rehabilitated many businesses, including those involving AI and companies under attack by deep-pocket trademark infringers.

57.   Mr. Latona is the manager of Playground AI, and founded the company on July 18, 2023, as part of negotiations with Playground.

58.   On July 20, 2023, Playground AI entered an agreement with Playground to purchase the domain name <playground.ai>; the Twitter/X handle @playgroundai; and "the entire worldwide and universal rights, title, and interest in and to all intellectual

property and trademark rights associated with the Assets, together with the goodwill of the business symbolized by such intellectual property and trademark rights… including any infringement or other trademark and intellectual property claims or causes of actions."

59.   Since then, Playground AI has continued working closely with Playground and Mr. Abentheuer on business strategy and to develop the best path for building upon the strength of Playground AI's IP rights.

60.   These consultations have included an August 2023 proposal for merging Mr. Latona's pre-existing ChatAI.com business with the company's offerings and to turn Playground AI into a "place where people not only learn about and experiment with new AI technology for the first time, but keep coming back to, [and] working with AI across modalities and platforms."

61.   On or around September 4, 2023, Playground AI released an improved website featuring access to text-to-image generative AI based on a Stable Diffusion model, and touting Playground AI's consulting services relating to machine learning, data collection, and data visualization. In addition to the domain name, this site prominently displays the mark "Playground.ai" in multiple locations.

COMPLAINT

(*See* https://playground.ai)
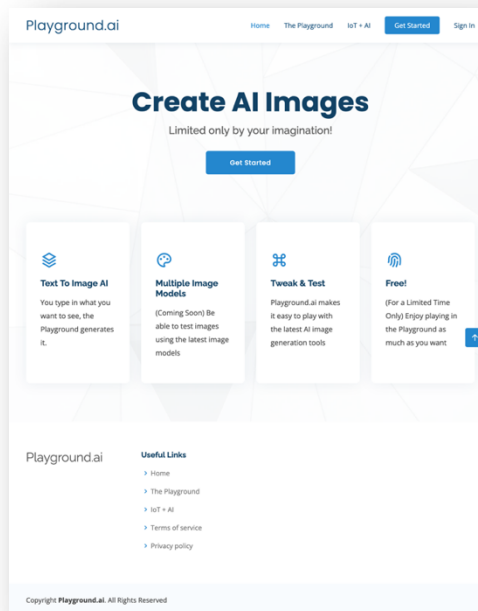
62.   Stable Diffusion is an open-source model based on the Latent Diffusion architecture introduced in *High-Resolution Image Synthesis with Latent Diffusion Models* (2021-2022) by Rombach et al. (*See* https://github.com/CompVis/stable-diffusion, https://arxiv.org/pdf/2112.10752.pdf).

63.   Stable Diffusion and similar text-to-image models use a pre-trained CLIP text encoder to generate embeddings that are transformed into images. CLIP is the same underlying text ⇆ image machine learning technology used by Playground's Worklens, which enabled the app to search images based on their content.

64.   CLIP is a critical component of Stable Diffusion, as it maps the semantic content of a text prompt into an "information space" or latent space from which the image is then generated. An abstraction of the Stable Diffusion model from Jay Alammar's *The Illustrated Stable Diffusion* shows the function and relative importance of CLIP for the model architecture:

(*See* http://jalammar.github.io/illustrated-stable-diffusion/).
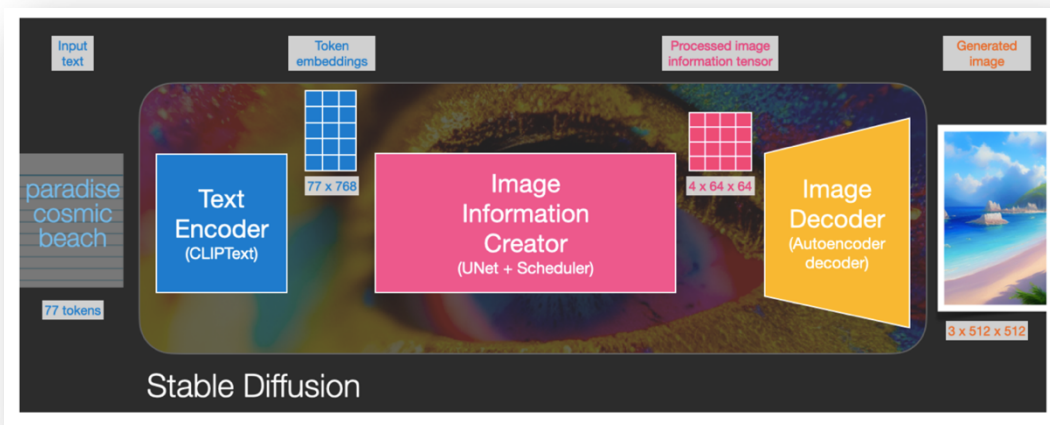
C. Mighty

65.   Upon information and belief, Suhail Doshi formed Mighty Computing, Inc. in early 2019. In August 2019, Mighty received funding from Y Combinator, which it

used to develop and market a cloud-based web browser service under the "Mighty" mark. This was around the same time that Playground started using the Playground AI Marks.

66.   Upon information and belief, Mighty Computing, Inc., was and is a closely held corporation with a small number of employees and an inconsistent history of compliance with legal formalities and obligations. For example, as of the date of this complaint, Mighty Computing, Inc., is not in good standing with the Secretary of State in California.

67.   Upon information and belief, Suhail Doshi is a central figure in Mighty Computing, Inc., and has personally participated in all major business strategy, branding, and marketing decisions and actions. As previously stated, the corporate entity and Suhail Doshi are referred to collectively herein as "Mighty."

68.   Although it is unclear when Mighty actually launched its cloud-based web browser product, articles from The Verge and 9to5Google suggest that it took nearly two years to reach market, becoming available for early access in April 2021. Notably, The Verge and 9to5Google's affiliate, 9to5Mac, were the very same publications that discussed Playground's launch of Anonymous Camera in 2020.

69.   Mighty's reception was mixed. The Verge article bore the title "Would you pay $30 a month for a faster web browser that eats less battery?" and the subtitle "Mighty fast, Mighty expensive." As the author explained: "it's not entirely clear why it costs so much more [than similar services], or who would be willing to pay $30 a month for such a subscription — you'd think the kinds of people who can afford a monthly browser bill on top of their monthly internet bill would be the same kinds of people who can afford a faster PC and faster internet to begin with." (*See* https://www.theverge.com/2021/4/29/2240 8818/mighty-browser-chrome-cloud-streaming-web).

70.   In November 2022, Mighty decided to wind down its cloud-based browser business, with Mr. Doshi announcing on Twitter that he had decided to stop work on the project and offering to sell the IP.

(*See* https://twitter.com/Suhail/status/1591813110230568963).

71.   In the same thread, Mr. Doshi explained that Mighty still had about 50% of its venture capital funding, "[e]nough to do another Mighty," and linked to Mighty's new project at <playgroundai.com>

72.   On or around September 14, 2022, approximately two months prior to this announcement, Mighty launched a website at <playgroundai.com> with the site title "Playground AI." It is unclear whether the site was interactive at this point, but it did display a combination of images and text prompts.

1   (*See* https://web.archive.org/web/20220914050012/https://playgroundai.com/).
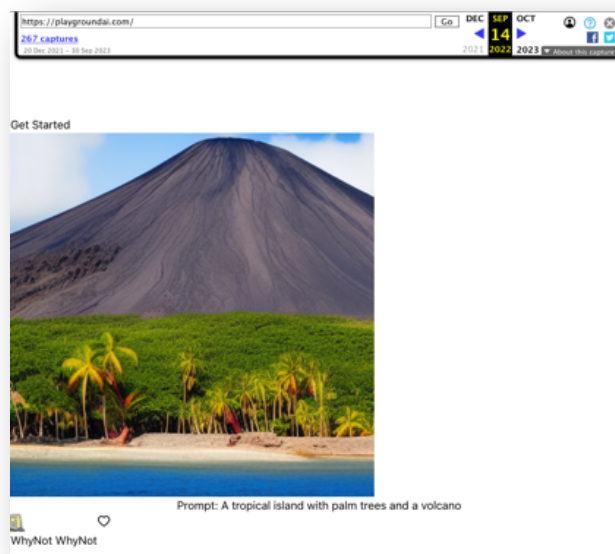
2   73.   Around the same time, Mighty began registering social media handles with

3   variations of "Playground AI". In September 2022, Mighty registered for Twitter/X han-

4   dle @playground_ai.

(*See* https://twitter.com/playground_ai).

12   74.   Upon information and belief, Mighty saw that @playgroundAI was already

13   taken, and registered a less-preferred alternative. Indeed, at one point, Mighty approached

14   Playground offering to buy its domain name and Twitter/X handle. However, it did not do

15   so.

16   75.   On November 9, Mighty registered a YouTube account @playgroundai,

17   the exact same handle used by Playground on Twitter/X.

(*See* https://www.youtube.com/@playgroundai).
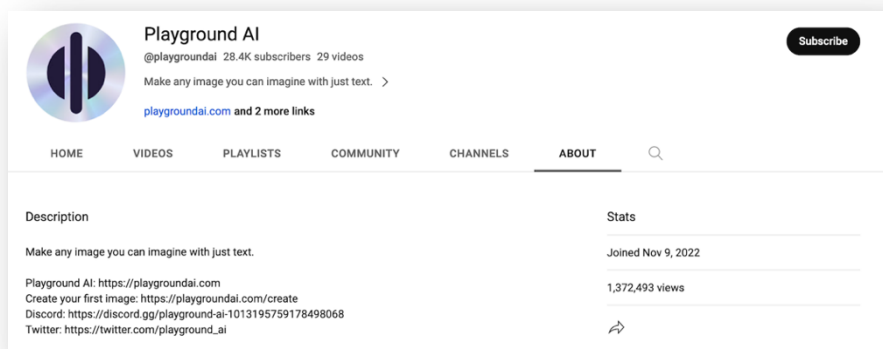
26   76.   Following launch of the new site in late 2022, through the present, Mighty

27   has used <playgroundai.com> and the marks "Playground" and "Playground AI" to

— 21 —

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market and sell access to an application that applies machine learning to images, including text-to-image generative AI powered by Stable Diffusion and similar CLIP-based models.

77.   In addition to generating images, Mighty's application has a community page where users can search through previously generated images based on their content. Upon information and belief, this feature is powered by a CLIP-based model and functions in a substantially similar manner to Playground's Worklens application.

78.   In a job posting for "Software Engineer – Product" on Ycombinator.com, Mighty touts "[s]earch using CLIP embeddings to enable queries like 'An underwater dog with sunglasses'" as the very first example of the company's technology.

Skills & Experience

- 2+ years of working full-time as a software engineer
- Understanding of modern web technologies

Here are examples of things we've worked on:

- Search using CLIP embeddings to enable queries like "An underwater dog with sunglasses"

(*See*   https://www.ycombinator.com/companies/playground-ai/jobs/mKqVTvI-software-engineer-product).

D. Infringement

79.   At the time of its launch in September 2022, Mighty knew or should have known that Playground had a long history of using the Playground AI Marks to distinguish its products and services, including applications that apply machine learning to image, video, and other data.

80.   Playground had already received substantial media coverage, and its site could be found with a simple search for "Playground AI." Moreover, Mighty had experience in the technology space and knew or should have known to check the popular ".ai" ccTLD when he registered <playgroundai.com>.

81.   At a minimum, Mighty should have discovered Playground AI's Twitter/X handle when it registered a substantially similar handle in September 2022. This was long before Mighty invested substantial resources and marketing into the new site, including Mighty's public announcement on November 13, 2022.

82.   Despite this knowledge, Mighty chose to push forward with using "Playground AI" and <playgroundai.com>, to market and sell goods and services to customers throughout the United States. Specifically, an application applying machine learning to text and images, based on the same underlying text ⇆ image architecture, CLIP, used by Playground's Worklens.

83.   Upon information and belief, Mighty lost substantial money and investor credibility with the failure of its cloud-based web browser service and had little to no name recognition in the AI space prior to September 2022.

84.   Upon information and belief, Mighty: (1) knew the Playground AI Marks were already in use and decided to use them anyway with the intent to appropriate the goodwill associated with them; and (2) appropriated that goodwill with the intent to lure unsuspecting customers and obtain new capital investment for a failed company that had no history in the AI industry.

85.   Following the launch of the new site, Mighty engaged in a marketing blitz in an effort to overwhelm Playground. Unfortunately, it had some success. Over time, Mighty's <playgroundai.com> became the first search result, pushing Playground AI's <playground.ai> to second place. Moreover, Siri Search Suggestions, enabled by default on Apple's Safari browser, now automatically redirects users typing <playground.ai> to <playgroundai.com>.
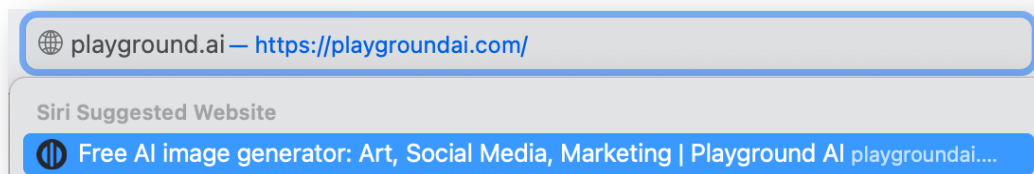
86.   Mighty's behavior was likely to cause consumer confusion and did, in fact, cause confusion. Consumers looking for Playground AI's site found Mighty's website, and consumers looking for Mighty's site found Playground AI's site. Mighty itself has identified consumers and media outlets that have confused the two sites.

E. UDRP

87.   A reasonable person in Mighty's position would have been satisfied with its ill-gotten gains. But Mighty was not, it wanted <playground.ai>. Having previously failed in its attempt to purchase the domain from Playground, Mighty decided to try and take it by force.

88.   On or around September 11, 2023, Mighty filed a WIPO UDRP complaint against the owner of <playground.ai>, which was and is Playground AI.

89.   In the Complaint, Mighty claimed that it has "common law rights in "PLAYGROUND and PLAYGROUND AI marks… for use in connection with online software services for finding, creating, manipulating, augmenting, and editing images, pictures, drawings, artwork and other modalities."

90.   Mighty's claim to "Playground" was odd, given significant prior use of playground in the software context as a generic term for an application or platform where users can safely experiment, test, learn, or play with various tools and algorithms. For example, in June 2022, Nvidia's "AI Playground," bore the subheading "The Intersection of AI, Art, and Science" and featured a text-to-image model called "GauGAN2":
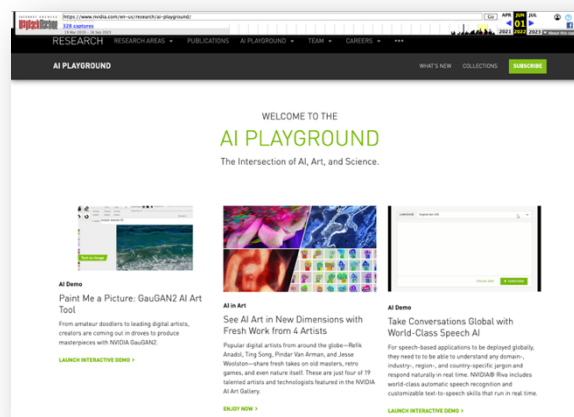
1   (*See* https://web.archive.org/web/20220601161254/https://www.nvidia.com/en-us/re-

2   search/ai-playground/).

3   91.   Mighty alleged that <playground.ai> is essentially identical to Mighty's

4   marks, the domain is being used in connection with identical services, and that this is

5   leading to actual confusion between the parties' services.

6   92.   Mighty further alleged that the owner of the domain has "no rights or le-

7   gitimate interests in respect of the domain name" since it acquired the domain name on

8   July 21, 2023, and that it was "not aware of any trademark rights, domain name rights, or

9   other rights that Respondent has relating to the PLAYGROUND AI or PLAYGROUND

10   marks."

11   93.   Finally, Mighty alleged that "[t]he domain name was registered and is

12   being used in bad faith." It alleged that Playground's "AI data solutions services" are

13   distinguishable from Mighty's software; that Mighty has "senior trademark rights"; and

14   that offering a text-to-image generative AI application is evidence that the domain was

15   registered in bad faith.

16   94.   On September 13, 2023, Mighty requested "additional time to further

17   amend its complaint," and followed up on October 2 and October 3. However, the WIPO

18   Arbitration and Mediation Center ("WIPO Center") did not respond to these requests.

19   95.   On October 5, 2023, Mighty requested dismissal of the UDRP complaint

20   "without prejudice" to refiling. On October 9, 2023, the WIPO Center responded that it

21   would terminate the case on October 11, absent objection.

22   96.   Nevertheless, Playground AI has a reasonable apprehension that Mighty

23   will reassert similar allegations of abusive cybersquatting in another UDRP proceeding or

24   lawsuit, particularly given its repeated requests to amend the complaint, which were

25   followed by an explicit request for dismissal "without prejudice." Playground AI

26   vigorously disputes these allegations, and they provide an actual case or controversy

27   warranting declaratory relief.

FIRST CLAIM FOR RELIEF

False Association and Designation of Origin

15 U.S.C. § 1125(a)

97.   Plaintiff incorporates by reference paragraphs 1-96 of the Complaint.

98.   Playground AI owns common law rights in the marks "Playground AI," "Playground.ai," and "playgroundAI" and variations with different capitalization (Playground AI Marks), which it acquired from its predecessors-in-interest, collectively known as Playground.

99.   Since 2019, Playground and Playground AI have continuously used the Playground AI Marks to distinguish goods and services in U.S.-based commerce. These include (1) applications that apply machine learning to image, video, and other data; and (2) consulting and software design services relating to machine learning, data collection, and data visualization.

100.   Although "Playground" and "AI" are generic in the software context, the inverted word order in which "Playground" functions as a noun-adjunct modifying "AI" creates a distinctive composite—it describes neither a type of software playground, nor a type of AI. The "Playground.AI" mark is particularly distinctive, as consumers understand that it refers to a specific domain name and only one entity can occupy a domain name at a time.

101.   Moreover, the Playground AI Marks have gained considerable consumer recognition through millions of impressions and tens of thousands of downloads on the Apple App Store page, tens to hundreds of thousands of visits to the <playground.ai> website, multiple appearances in popular publications and podcasts targeted at U.S. audiences, popular social media postings in online communities with millions of members, and publicized relationships with well-known clients Ford Motor Company and Rafael Nadal.

102. Mighty's "Playground AI," "Playgroundai," and "Playgroundai.com" marks are identical or substantially similar to the Playground AI Marks. Moreover, Mighty uses them in connection with goods and services marketed and sold to U.S. customers, which are substantially similar to those offered by Playground AI. Specifically, namely, an application that applies machine learning to images and text data. Indeed, the machine learning models used by Mighty employ the same CLIP text ⇆ image technology used by Playground's Worklens application.

103. At the time it started using these marks, Mighty knew or should have known that the Playground AI Marks were already in use by a company offering substantially similar goods and services.

104. Upon information and belief, Mighty intentionally chose the Playground AI Marks to appropriate their good will and historical recognition in the AI space in order to attract new customers and venture capital funding for a failed business unrelated to AI.

105. Mighty funded an aggressive marketing and litigation campaign against Playground AI in the hopes of overwhelming and bullying the company out of its rights and domain name. Unfortunately, Mighty had some success, and has caused popular search engines to down-rank Playground AI's site, and at least one popular web browser to auto-redirect queries for <playground.ai> to Mighty's website.

106. This confusion has made it more difficult for consumers to locate Playground AI's website and has also harmed Playground AI's reputation, as some customers mistakenly believe that Playground AI is the infringer and has bad intentions.

107. Mighty is liable for damages, including a disgorgement of its profits and damages for reverse trademark infringement, plus attorney fees for its exceptionally bad faith conduct.

COMPLAINT

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SECOND CLAIM FOR RELIEF

Declaratory Judgment of No Cybersquatting

15 U.S.C. § 1125(d); 28 U.S.C. § 2201

108.   Plaintiff incorporates by reference paragraphs 1-96 of the Complaint.

109.   Mighty does not own valid common law trademark rights in "Playground" because it is a generic term, and "Playground AI," because its rights are inferior to and infringe upon Playground AI's rights in the Playground AI Marks.

110.   The domain name <playground.ai> is not "identical or confusingly similar" to a mark that was "distinctive at the time of registration" because Mighty (1) does not own a valid common-law trademark right; (2) did not own such a right in 2017, when the domain name was registered; (3) did not own such a right in 2019, when Playground AI began using the domain name; and (4) did not begin using its "Playground AI" mark until late 2022.

111.   Neither Playground AI nor its predecessors registered the domain name with a bad intent to profit from the mark because Mighty (1) does not own a valid common-law trademark right; (2) did not own such a right in 2017, when the domain name was registered; (3) did not own such a right in 2019, when Playground AI began using the domain name; and (4) did not begin using its "Playground AI" mark until late 2022.

112.   In July 2023, Playground AI purchased <playground.ai>, the X-Twitter handle @playgroundai, and all associated intellectual property and trademark rights from Playground, which date back to the date of registration in 2017 and use in 2019. Through this transaction, Playground AI stepped into the shoes of Playground, and took over its rights with respect to the registration and use of the <playground.ai> domain name, and use of the Playground AI Marks.

113.   Since registration, neither Playground nor Playground AI have ever demonstrated a bad faith intent to profit from the Playground AI Marks.

114.   From 2019 to 2023, Playground consistently used <playground.ai> and the Playground AI Marks to distinguish its goods and services: (1) applications that apply machine learning to image, video, and other data; and (2) consulting and software design services relating to machine learning, data collection, and data visualization.

115.   Since 2023, Playground AI has consistently used <playground.ai> and the Playground AI Marks to distinguish the very same goods and services: (1) applications that apply machine learning to image, video, and other data; and (2) consulting and software design services relating to machine learning, data collection, and data visualization.

116.   Playground AI's deployment of a text-to-image generative AI application based on machine learning technology already associated with the Playground AI Marks is entirely consistent with a good faith use of its trademark rights and domain. Stable Diffusion is a popular open-source text-to-image model, and applications providing access to text-to-image models are commonly featured on playground websites designed to showcase advances in AI technology. Mighty's application and its infringing brand are neither novel nor unique.

117.   Playground AI's text-to-image generative AI application was also a natural progression of the goods and services associated with the Playground AI Marks, based on the latest developments in AI technology.

118.   The CLIP architecture debuted in January 2021. Playground used this new technology to build Worklens, an application allowing users to search and group images based on content. By May 8, 2022—well before Mighty ever entered the AI space—the company was already demoing the application and inviting Reddit users to try it out.

119.   The Stable Diffusion architecture, which incorporates a CLIP-based text encoder, debuted in August 2022. Playground initially considered using this new model to generate synthetic data for its consulting practice. But when Playground AI took over, it chose to offer it through an application, similar to Worklens and Anonymous Camera.

COMPLAINT

120.   Worklens and Playground AI's latest text-to-image application are two sides of the same coin, both employ the same underlying text ⇆ image machine learning technology to convert the semantic content of text into an image information space. This results in a similar consumer impression—an application that intelligently understands, describes, or creates images with natural language.

121.   By mid-2022, consumers already associated the <playground.ai> domain name and Playground AI Marks with the latest advances in machine learning technology for image, video, and other data. Notwithstanding Mighty's subsequent infringement, Playground AI had a good faith belief that it could continue to offer new applications based on the latest and most popular text ⇆ image machine learning models.

122.   Playground AI has not offered to transfer, sell, or otherwise assign the <playground.ai> domain to Mighty or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services. Nor does Playground AI's prior conduct indicate a pattern of such conduct.

123.   Playground AI has not registered or acquired multiple domain names which it knew were identical or confusingly similar to the marks of others that were distinctive at the time of their registration.

124.   Mighty filed a UDRP complaint against the owner of <playground.ai>, which is Playground AI, alleging that (1) Mighty has superior rights in "Playground AI"; (2) it has "no rights or legitimate interests in respect of the domain name"; and (3) the "domain name was registered and is being used in bad faith."

125.   While Mighty requested dismissal of the complaint, it explicitly requested dismissal "without prejudice" and only did so after the WIPO Center failed to grant an extension to amend the complaint despite repeated requests over three weeks.

126.   Playground AI has a reasonable apprehension that Mighty will reassert similar allegations of abusive cybersquatting in another UDRP proceeding or lawsuit.

Playground AI vigorously disputes these allegations, and they provide an actual case or controversy warranting declaratory relief.

127.   Accordingly, Playground AI seeks a declaration that Playground AI's use of the <playground.ai> domain does not qualify as cybersquatting pursuant to 15 U.S.C. § 1125(d) and 28 U.S.C. § 2201.

PRAYER FOR RELIEF

i.   Judgment on the claims set forth above, including findings that Mighty is liable for false association and false designation of origin and that its actions were intentional, willful, and in bad faith.

ii.   A declaration that Playground AI's use of the <playground.ai> domain does not qualify as cybersquatting pursuant to 15 U.S.C. § 1125(d).

iii.   An award of damages to be determined at trial.

iv.   An award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

v.   Such other and further relief the Court deems proper.

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JURY DEMAND

Playground AI LLC demands a trial by jury on the foregoing allegations.

Respectfully Submitted,   /s/ Michael P. Eddy
October 11, 2023   Michael P. Eddy

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